TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 74

THE NORFOLK AND WESTERN RAILWAY COMPANY AND MRS. C. L. SATTERFIELD, PLAINTIFFS IN ERROR,

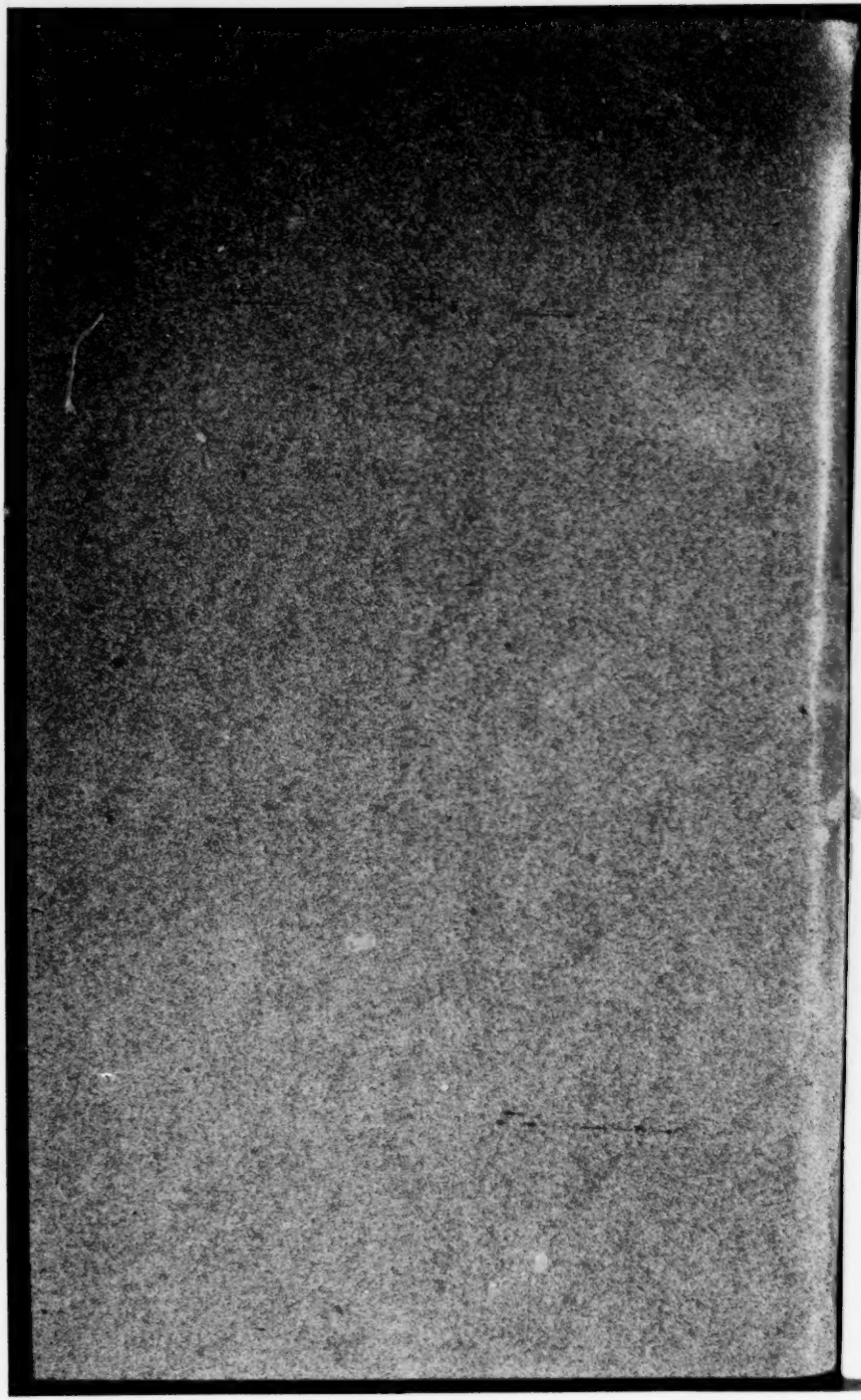
vs.

JOHN R. SIMS, SHERIFF OF PERSON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED JUNE 14, 1902.

(18,587.)



(18,587.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 359.

THE NORFOLK AND WESTERN RAILWAY COMPANY AND MRS. O. L. SATTERFIELD, PLAINTIFFS IN ERROR,

vs.

JOHN R. SIMS, SHERIFF OF PERSON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Caption	1	1
Writ of error	2	1
Citation and service	4	2
Assignment of errors	5	2
Bond on writ of error	9	5
Proceedings in superior court of Person county	11	6
Submission of controversy without action	11	6
Facts agreed	12	7
Affidavit of plaintiff	18	10
Decision and judgment	18	11
Appeal	21	13
Judge's certificate	21	13
Exceptions of appellants	22	13
Bond on appeal	23	14
Clerk's certificate	24	15
Docket entries	27	15
Opinion	27	15
Judgment	28	16
Stipulation for stay of proceedings, &c	29	16
Clerk's certificate	30	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 17, 1902.

1 North Carolina Supreme Court.

JOHN R. SIMS, Sheriff of Person County,
against
NORFOLK & WESTERN RAILWAY COMPANY and MRS. O. L. SATTERFIELD.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of North Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court of the State of North Carolina, before you, or some of you, being the highest court of law or equity of said State, in which a decision could be had in said suit between John R. Sims, sheriff of Person county, and The Norfolk & Western Railway Company and Mrs. O. L. Satterfield, in which the said Norfolk & Western Railway Company and Mrs. O. L. Satterfield were appellants, wherein was drawn in question the validity of a statute, or an authority exercised under, of said State on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity; and wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemptions specially set up or claimed under such clause of the said Constitution, all of which appears in the record and proceedings in said suit, manifest error has happened, to the great damage of the said Norfolk & Western Railway Company and Mrs. O. L. Satterfield, as by their complaint and contentions appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things therein
3 concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, within thirty days from the date of this writ in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the

said Supreme Court, the 30th day of May, in the year of our Lord nineteen hundred and two.

[Seal United States Circuit Court, Eastern Dist. of N. C.]

N. J. RIDDICK,
Clerk of the Circuit Court of the United States for the Eastern District of North Carolina.

Allowed.

DAVID M. FURCHES,
Chief Justice of the Supreme Court of North Carolina.

Fee, $1.20, paid by W. A. Guthrie, att'y.

(Filed in supreme court of North Carolina May 30, 1902.)

4 UNITED STATES OF AMERICA, *ss:*

To Jno. R. Sims, sheriff of Person County, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the 2nd Monday, 13th day of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of North Carolina, wherein The Norfolk & Western Railway Company and Mrs. O. L. Satterfield are the plaintiffs and Jno. R. Sims, sheriff of Person county, is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable D. M. Furches, chief justice of the supreme court of North Carolina, this the 30th day of May, in the year of our Lord nineteen hundred and two.

DAVID M. FURCHES,
Chief Justice.

Service of the above citation and receipt of a copy thereof admitted. This the 30th day of May 1902.

JAS. E. SHEPHERD,
Attorney for Jno. R. Sims, Sheriff of Person County, North Carolina.

(Filed in supreme court of North Carolina May 30, 1902.)

5 (Title of Cause.)

Assignment of Errors.

And now on this the 30th day of May, 1902, comes the defendants, The Norfolk & Western Railway Company and Mrs. O. L. Satterfield, plaintiffs in error, by their attorneys William A. Guthrie and William B. Guthrie, and say that in the record and proceedings

in the above-entitled cause, submitted without action under the provisions of the Code of North Carolina, there is error in that:—

First. The said supreme court of North Carolina erred in deciding and holding in the opinion handed down, and in the judgment rendered by said court in this cause, that there is "no error" in any of the several rulings, holdings and judgment of the superior court of Person county, North Carolina upon the facts agreed, set forth in the record in this cause, thereby fully sustaining and affirming in each and every particular the said rulings, holdings and judgment of said superior court of Person county, and the plaintiffs in error assign the same as error, contending now, as heretofore, that the aforesaid rulings, holdings and judgment of the said superior court of said Person county should have been wholly reversed by said supreme court of North Carolina.

Second. And for a more particular and specific assignment of errors, the plaintiffs in error say there was error in the following particulars, and in each of the following rulings and holdings of the court upon the facts agreed set forth in the record: (1) "That the sale of the sewing machine referred to in the case agreed took place in the State of North Carolina, and it follows that the vendors, Sears, Roebuck & Co. are liable for the license tax imposed by section 52 chapter 9 Public Laws of North Carolina, session 1901." (2) "That the license tax follows said sewing machine into the hands of the purchaser." (3) "That by payment of the purchase price to the
6 express agent at Roxboro, N. C. and in securing the bill of lading, the defendant Mrs. O. L. Satterfield did not acquire a good and unincumbered title to said sewing machine." (4.) "That any levy made or threatened to be made by the plaintiff as sheriff of Person county upon said sewing machine for the license tax of said Sears, Roebuck & Co. is not in violation of the rights of the defendant, Mrs. O. L. Satterfield, as a purchaser of said sewing machine." (5.) "That any levy made or threatened to be made by plaintiff upon said sewing machine, while it is in the possession of the defendant The Norfolk & Western Railway Co., for the license tax of said Sears, Roebuck & Co. is not and would not be an unlawful interference with interstate commerce, nor an unlawful interference with the rights, privileges and duties of said Norfolk & Western Railway Co. as a common carrier engaged in business of interstate commerce." (6.) "That if the defendant The Norfolk & Western Railway Co should, upon the receipt of the carrier charges and surrender to it of the bill of lading, actually deliver said sewing machine to the defendant Mrs. O. L. Satterfield, it would thereby render itself liable to prosecution for a misdemeanor, and for the penalties provided in sections 101 and 103 chapter 9 Public Laws 1901." (7.) "That in making its deliveries of other machines in several places in this State, through their agents, the railroads and express companies in pursuance of the contract and arrangement set forth in the statement of facts herein, Sears, Roebuck & Co., are indebted to the State in the sum of three hundred & fifty dollars for license tax." (8.) "That the incomplete transaction as to the particular machine in controversy was of itself an 'attempt to sell' and

also makes the said Sears, Roebuck & Co. liable to the State for the said sum of three hundred & fifty dollars license tax as set forth in the preceding section." (9.) "That the particular machine in
7 controversy having been levied upon before the presentation of the bill of lading was subject to such levy for the payment of said indebtedness to the State, subject to the charges of the defendant railway Co. for carriage and storage as warehousemen." (10.) "That the said railroads and express agents in acting as the agents of Sears, Roebuck & Co. as set forth in the statement of facts, are subject to the fines and penalties provided in section 52 chapter 9 Public Laws 1901." (11.) "That said machines are subject to levy for said tax after delivery, and in the hands of the purchaser."

Third. And the judgment set forth in the record based upon and rendered by the court, pursuant to the foregoing erroneous rulings, holdings and decisions of the said superior court of Person county, which was upon exceptions thereto and upon appeal therefrom sustained by said supreme court of North Carolina, was also erroneous.

Fourth. The said supreme court of North Carolina, in the opinion handed down in this cause, erred in deciding and holding that the section of the revenue act of North Carolina, chapter 9 section 52 Public Laws 1901 referred to and quoted in the opinion, did apply to the transactions set forth in the facts agreed upon in this cause, and thereby in effect erroneously decided and held that the interstate-commerce clause of the Constitution of the United States did not apply to said transaction, or to any other similar commercial transactions between Sears, Roebuck & Co. and their customers in North Carolina.

Fifth. The said supreme court of North Carolina in the aforesaid opinion of said court, delivered by Mr. Justice Clark, misconceived the agreed facts as to whom and how the plaintiff in error Mrs. O. L. Satterfield paid the purchase price of the sewing machine, the court in said opinion assuming that "payment was made to the common carrier (railway company) acting as agent for the shipper;" whereas the facts agreed set forth that the purchase price of the sew-
8 ing machine was made to the express company, and her contention heretofore and still is that thereupon she acquired a good title to the sewing machine, which was not subject to be divested by any sheriff's levy thereon for tax claims aginst the vendors, Sears, Roebuck & Co. of Chicago.

Wherefore the said plaintiffs in error pray that the judgment of the supreme court of North Carolina be reversed and that such orders and decrees be made, and further proceedings had, as the plaintiffs in error may be entitled to.

Dated at Raleigh, N. C. May 30, 1902.

WM. A. GUTHRIE AND
WM. B. GUTHRIE,
Attorneys for Norfolk & Western Railway Co. and Mrs. O. L. Satterfield, Plaintiffs in Error.

(Filed in the supreme court of North Carolina May 30, 1902.)

9 (Title of Cause.)

Bond.

Know all men by these presents that we, The Norfolk & Western Railway Company and Mrs. O. L. Satterfield, as principals, and J. S. Carr and P. W. Vaughan, as sureties, are held and firmly bound to the defendant John R. Sims, sheriff of Person county North Carolina, in the full and just sum of five hundred dollars to be paid to the said defendant John R. Sims, sheriff of Person county North Carolina and his successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated the 30th day of May in the year of our Lord nineteen hundred and two.

Whereas, lately in the supreme court of North Carolina, in a suit pending in said court between John R. Sims, sheriff of Person county, plaintiff, and The Norfolk & Western Railway Company and Mrs. O. L. Satterfield, defendants, judgment was rendered against the said Norfolk & Western Railway Company and Mrs. O. L. Satterfield, and the said Norfolk & Western Railway Company and Mrs. O. L. Satterfield having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John R. Sims, sheriff of Person county citing and admonishing him to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington on the 13th day of October next: Now, the condition of the above obligation is such that if the said Norfolk & Western Railway Company and Mrs. O. L. Satterfield shall prosecute the said writ of error to effect and answer all damages and costs if they fail to make the said plea good, then the said obligation to be void; otherwise to remain in full force and effect.

10 NORFOLK & WESTERN RAILWAY COMPANY,
By WM. A. GUTHRIE,
WM. B. GUTHRIE, *Its Attorneys.*
MRS. O. L. SATTERFIELD,
By WM. A. GUTHRIE AND
WM. B. GUTHRIE, *Her Attorneys.*
JULIAS S. CARR. [SEAL.]
P. W. VAUGHAN. [SEAL.]

STATE OF NORTH CAROLINA, }
City and County of Durham. }

J. S. Carr, being duly sworn, says he is a freeholder and a resident of the city and county of Durham aforesaid and that he is worth the sum of one thousand dollars over and above all his just debts and liabilities, and in excess of his homestead and personal property exemptions allowed by law.

JULIAN S. CARR.

Subscribed and sworn to before me this the 30th day of May, A. D. 1902.

W. J. HALLOWAY,
[L. S.] *Notary Public.*

STATE OF NORTH CAROLINA, }
City and County of Durham. }

P. W. Vaughan being duly sworn says he is a freeholder and a resident of the city and county of Durham aforesaid and that he is worth the sum of one thousand dollars over and above all his just debts and liabilities, and in excess of his homestead and personal property exemptions allowed by law.

P. W. VAUGHAN.

Subscribed and sworn to before me this the 30th day of May A. D. 1902.

W. J. HOLLOWAY,
[L. S.] *Notary Public.*

Approved by—
DAVID M. FURCHES,
Chief Justice of the Supreme Court of North Carolina.

(Filed in the supreme court of North Carolina May 30, 1902.)

11 In the Supreme Court.

From Person County.

Submission of Controversy Without Action.

NORTH CAROLINA, }
Person County. }

Superior Court.

JNO. R. SIMS, Sheriff of Person County, }
against }
NORFOLK AND WESTERN RAILWAY COMPANY and MRS. O. L. Satterfield. }

There being a controversy as is hereinafter set forth, between the plaintiff and the defendants, The Norfolk and Western Railway Company and Mrs. O. L. Satterfield, which might be the subject of a civil action, the plaintiff and the defendants hereby mutually agree to submit said controversy without action under the provisions of sections 567, 568 and 569, of the Code of North Carolina, to the Honorable Walter H. Neal, judge of the superior court, holding the superior courts at the spring terms thereof in the ninth judicial district, which said judicial district embraces the county of Person, for his adjudication, decision and judgment, at chambers within said judicial — on the 7th day of January, 1902, or as soon thereafter as the court can conveniently hear and consider the same upon the following facts agreed upon between the parties:

12 *Facts Agreed.*

1. That the plaintiff, Jno. R. Sims, is now, and was at the times hereinafter mentioned, sheriff and *ex officio* the tax collector of the public State and county taxes in and for said county of Person, in the State of North Carolina.

2. That the defendant, The Norfolk and Western Railway Company, is a railroad corporation duly created, organized and existing under, and by virtue of the laws of the State of Virginia.

3. That the defendant, The Norfolk and Western Railway Company, is, and was at the times hereinafter mentioned, the owner of, and engaged as a common carrier of passengers and freights in the business of operating the interstate railroad known as the "Lynchburg and Durham division of the Norfolk and Western railway," situated between the city of Lynchburg, in the said State of Virginia, and the city of Durham, in the said State of North Carolina, said interstate railroad extending from the main line of said Norfolk and Western railway at and in said city of Lynchburg, Virginia, to and across the boundary line between the State of Virginia and the State of North Carolina; thence into and through the said county of Person, in said State of North Carolina, via Roxboro in said county of Person, to the city of Durham, in the county of Durham, in said State of North Carolina.

4. That Sears, Roebuck & Co. (incorporated), of the city of Chicago, in the State of Illinois, are manufacturers and dealers in sewing machines, at and in the city of Chicago, in the State of Illinois.

5. That the defendant, Mrs. O. L. Satterfield, who is a citizen and resident of said county of Person, in the said State of North Carolina, on or about the 1st day of November, 1901, sent an unqualified and specific order and contract on her part by mail to said Sears,

13 Roebuck & Co., to said city of Chicago, Illinois, for the sewing machine hereinafter mentioned, which said sewing machine was thereupon shipped as railroad freight by said Sears, Roebuck & Co., from said city of Chicago, Illinois, to the defendant, Mrs. O. L. Satterfield, to Roxboro, in said county of Person, North Carolina, said Sears, Roebuck & Co., on November 5, 1901, procuring from the railroad carrier at and in said city of Chicago, Illinois, a bill of lading in the usual form "on order to notify," for said sewing machine; that is to say, the carrier under the contract provisions in said bill of lading bound itself and its connecting lines of railroad between Chicago, Illinois, and Roxboro, North Carolina, to said Sears, Roebuck & Co., the consignors, that said sewing machine would be transported and delivered by the carriers to the consignee, the defendant, Mrs. O. L. Satterfield, at Roxboro, North Carolina, upon the presentation and surrender of said bill of lading to the defendant's (Norfolk and Western Railway Company) agent at Roxboro, North Carolina, the point of destination, and payment of the carrier's freight charges thereon. Said bill of lading was sent by said Sears, Roebuck & Co., by express C. O. D. to the express agent at Roxboro, North Carolina, who received, as express agent, the

purchase price of said sewing machine, and thereupon delivered the bill of lading to the defendant, Mrs. O. L. Satterfield. The express agent and the railway agent being one and the same person, to wit, A. P. Gilbert.

6. That the defendant, Mrs. O. L. Satterfield, has paid said Sears Roebuck & Co. the purchase price for said sewing-machine, and now has in her possession the aforesaid bill of lading, which was issued as aforesaid to said Sears, Roebuck & Co., and has presented said bill of lading to A. P. Gilbert, the station agent of the defendant
14 Norfolk and Western Railway Company at Roxboro, North Carolina, and has tendered to said A. P. Gilbert, the station agent of the defendant Norfolk and Western Railway Company at Roxboro, North Carolina, ($1.41) one and $\frac{41}{100}$ dollars, the carrier's freight charges on said sewing machine, and offered to surrender said bill of lading to the defendant, The Norfolk and Western Railway Company, and has demanded of the defendant, The Norfolk and Western Railway Company, the delivery to her of said sewing machine, and such delivery being refused because of the action and interference of the plaintiff as is hereinafter set forth, the defendant, Mrs. O. L. Satterfield, threatens to bring a civil action in claim and delivery proceedings against the defendant, The Norfolk and Western Railway Company, for the delivery of said sewing machine to her, and damages for its detention, and to join the plaintiff in said civil action as a party defendant for that purpose.

7. That as a common carrier of freight, the defendant, Norfolk and Western Railway Company, on or about the — day of November, 1901, at a point on its railway system, outside the boundaries of said State of North Carolina, from a connecting line of railroad, received for transportation and carriage over its aforesaid interstate line of railway (Lynchburg and Durham division of the Norfolk and Western railway) the aforesaid sewing machine to be transported to its said station at Roxboro, North Carolina, and there to be delivered to the defendant, Mrs. O. L. Satterfield, the consignee, upon payment of the carrier's charges thereon, and the presentation by the said Mrs. O. L. Satterfield, the defendant, of the aforesaid bill of lading, and the surrender thereof to the station agent of the defendant, Norfolk and Western Railway Company, at Roxboro, North Carolina.

15 8. That said sewing machine was transported over the aforesaid interstate railroad of the defendant, Norfolk and Western Railway Company to Roxboro, North Carolina, and is now in possession of the defendant, Norfolk and Western Railway Company, at its said Roxboro station, ready to be delivered to the defendant, Mrs. O. L. Satterfield, the holder of said bill of lading, upon the surrender of said bill of lading and payment of the freight charges on said sewing machine as aforesaid; and the defendant, Norfolk and Western Railway Company is willing and anxious to comply with her demand if it is lawful to do so under the circumstances.

That as is hereinbefore stated, the defendant, Mrs. O. L. Satterfield, has offered as aforesaid to surrender said bill of lading and

tendered payment of the aforesaid freight charges on said sewing machine, and demanded delivery thereof to her, but her said demand has not been complied with by the defendant, Norfolk and Western Railway Company, because of the action and threatened action of the plaintiff as is hereinafter set forth.

9. That the defendant, Norfolk and Western Railway Company, has duly complied with chapter 9, Public Laws of North Carolina, entitled "An act to raise revenue," ratified the 15th day of March, A. D. 1901, and has paid the Schedule "C" license taxes under sections 87, 88 and 89 of said chapter, for the privilege of carrying on its aforesaid railroad business as a common carrier within the said State of North Carolina.

10. That the said Sears, Roebuck & Co., of Chicago, Illinois, the consignors named in the aforesaid bill of lading, have not paid the license tax for selling sewing machines within the State of North Carolina, provided for in section 52 of said chapter 9, Public Laws of North Carolina, 1901, and have made several deliveries at various points in North Carolina on the lines of other interstate rail-
16 roads running into North Carolina, upon the presentation of bills of lading under the same conditions as above described.

11. That the plaintiff, as sheriff and *ex officio* tax collector in and for the said county of Person, claiming that he has the lawful right to interfere in this regard with the defendant's aforesaid business as a railroad common carrier, has forbidden the delivery, and has notified the defendant, Norfolk and Western Railway Company, to withhold and stop the delivery of the aforesaid sewing machine to the defendant, Mrs. O. L. Satterfield, the consignee thereof, until the aforesaid license tax for selling the same in North Carolina shall have been paid, and in case the said sewing machine should be actually delivered by the defendant, Norfolk and Western Railway Company, under the circumstances aforesaid, then, and in that event, the plaintiff claims that the defendant Norfolk and Western Railway Company would, by such delivery, be acting as agent for said consignors, Sears, Roebuck & Co., and the defendant Norfolk and Western Railway Company would be thereby aiding, and assisting, and abetting, said Sears, Roebuck & Co. in the unlawful sale of said sewing machine within said county of Person, North Carolina, and the defendant, Norfolk and Western Railway Company, would therefor- be liable to prosecution for a misdemeanor, and would also be subject to the penalty therefor of fifty dollars, to be recovered by the plaintiff in a civil action before a justice of the peace of said Person county, under the provisions of section 103 of said chapter 9, Public Laws of 1901, and for such unlawful delivery of said sewing machine to the consignee thereof, the defendant, Mrs. O. L. Satterfield, the plaintiff threatens to prosecute the defendant Norfolk and Western Railway Company, both civilly and criminally as
17 aforesaid. The plaintiff also claims that after delivery by the agent to Mrs. O. L. Satterfield, the machine is attachable in her hands until the taxes are paid. The plaintiff also claims that he is entitled to hold said sewing machine for the taxes, provided

the charges of the railway company for carriage are paid to the company.

12. That with such interference with the business of the defendant as aforesaid, the defendant, Norfolk and Western Railway Company, on its part complains of the plaintiff, and threatens to sue him in a civil action for damages therefor, and for such other relief as the defendant may be adjudged by a court of competent jurisdiction to be entitled to.

But the parties to this submission of controversy without action being desirous of having the questions of law involved therein speedily determined, and their respective rights and duties in the premises declared by the court, do hereby submit the foregoing facts agreed for the opinion, decision and judgment of the court thereon, it being understood and agreed between and among the parties that the right of appeal from the decision and judgment of the court is hereby expressly reserved.

Dated at Roxboro, North Carolina, this the 30th day of December, 1901.

JNO. R. SIMS, *Sheriff of Person County.*
NORFOLK & WESTERN RAILWAY CO.,
By GUTHRIE & GUTHRIE,
Attorneys for Norfolk and Western R'y Co.
MRS. O. L. SATTERFIELD,
By O. L. SATTERFIELD, *Agent.*

18 NORTH CAROLINA, }
Person County. }

Jno. R. Sims, the plaintiff, and A. P. Gilbert, who is local station agent of the defendant, Norfolk and Western Railway Company, at Roxboro, North Carolina, being duly sworn, each for himself maketh oath, that the foregoing controversy is real, and the proceedings are in good faith to determine the rights of the parties.

JNO. R. SIMS,
Sheriff of Person County.
A. P. GILBERT,
Local Agent Norfolk and Western R'y Co.

Sworn to and subscribed before me this the 30th day of December, 1901.

D. W. BRADSHER,
Clerk Superior Court, Person County.

Decision and Judgment.

NORTH CAROLINA, *Person County.*

In the Superior Court.

JNO. R. SIMS, Sheriff of Person County, *against* NORFOLK AND WESTERN RAILWAY COMPANY and MRS. O. L. Satterfield.

This case submitted without action under the Code of North Carolina upon the facts agreed, coming on to be heard by consent of the parties at chambers in the city of Durham, within the ninth judicial district, on the 7th day of January, 1902, and the same being heard by the court at the time appointed upon the facts agreed, after argument of counsel on both sides upon the
19 questions of law involved in this controversy, the court took the papers reserving its decision until the 25th day of January, 1902, at and in the said city of Durham, when and where the court handed down the following decision and judgment as follows, to wit:

The court is of the opinion, and so decides, as follows, to wit:

1. That the sale of the sewing machine referred to in the case agreed took place in the State of North Carolina, and it follows that the vendor, Sears, Roebuck & Co., are liable for the license tax imposed by section 52, chapter 9, Public Laws of North Carolina, session 1901.

2. That the license tax follows said sewing machine into the hands of the purchaser.

3. That by payment of the purchase price to the express agent at Roxboro, N. C., and securing the bill of lading, the defendant, Mrs. O. L. Satterfield, did not acquire a good and unencumbered title to said sewing machine.

4. That any levy made, or threatened to be made, by the plaintiff as sheriff of Person county upon said sewing machine for the license tax of said Sears, Roebuck & Co., is not in violation of the rights of the defendant, Mrs. O. L. Satterfield, as a purchaser of said sewing machine.

5. That any levy made, or threatened to be made, by plaintiff upon said sewing machine, while it is in the possession of the defendant, Norfolk and Western Railway Company, for the license tax of said Sears, Roebuck & Co., is not, and would not be, an unlawful interference with interstate commerce, nor an unlawful interference with the rights, privileges and duties of said Norfolk and Western Railway Company as a common carrier engaged in the business of interstate commerce.

20 6. That if the defendant, Norfolk and Western Railway Company, should upon receipt of the carrier charges and surrender to it of the bill of lading, actually deliver said sewing ma-

chine to the defendant, Mrs. O. L. Satterfield, it would thereby render itself liable to prosecution for a misdemeanor, and for the penalty provided in sections 101 and 103, chapter 9, Public Laws of 1901.

7. That in making its deliveries of other machines in several places in this State, through their agents, the railroads and express companies in pursuance of the contract and arrangement set forth in the statement of facts herein, Sears, Roebuck & Co., are indebted to the State in the sum of three hundred and fifty dollars for license tax.

8. That the incomplete transaction as to the particular machine in controversy was of itself an "attempt to sell," and also makes the said Sears, Roebuck & Co. liable to the State for the said sum of three hundred and fifty dollars' license tax, as set forth in the preceding section.

9. That the particular machine in controversy having been levied upon before the presentation of the bill of lading, was subject to such levy for the payment of said indebtedness to the State, subject to the charges of the defendant railway company for carriage and storage as warehouseman.

10. That the said railroads and express agents in acting as the agents of Sears, Roebuck & Co., as set forth in the statement of facts, are subject to the fines and penalties provided in section 52, chapter 9, Public Laws of 1901.

11. That said machines are subject to levy for said tax after delivery, and in the hands of the purchaser.

It is therefore adjudged that Sears, Roebuck & Co. are indebted to the State of North Carolina in the sum of three hundred
21 and fifty dollars for license tax in selling and attempting to sell sewing machines without a license, and that the levy by the plaintiff, sheriff, upon the machine in question, was and is lawful and valid, and that after paying the defendant railway company the freight and warehouse charges upon the same, he proceed to sell said sewing machine, and apply the proceeds to the payment of said tax. That upon payment to it by the plaintiff, sheriff, of said freight and warehouse charges, the said defendant, railway company, has no right to hold the said machine as against the plaintiff. That the defendant, Norfolk and Western Railway Company, has no legal right to deliver said sewing machine to its codefendant, Mrs. O. L. Satterfield. That the defendants pay the costs of this controversy submitted without action to be taxed by the clerk of the superior court of Person county.

Let the clerk of the superior court of Person county file the case agreed in his office, and enter the foregoing decision and judgment as the judgment of the superior court of said county of Person.

WALTER H. NEAL,
Judge Superior Court, Holding the Courts of the Ninth Judicial District.

From the foregoing judgment the defendants appeal to the supreme court. Notice of appeal given and accepted. Appeal bond in the sum of $25.00 adjudged sufficient.

By consent of counsel on both sides the case agreed, and the foregoing decision and judgment of this court, shall constitute the record and case on appeal to the supreme court.

WALTER H. NEAL,
Judge Superior Court, Holding the Courts of the Ninth Judicial District.

22 *Exceptions of Appellants (Defendants) to the Decision and Judgment of the Court upon the Facts Agreed.*

NORTH CAROLINA, }
Person County. }

In the Superior Court.

JOHN R. SIMS, Sheriff of Person County,
against
NORFOLK AND WESTERN RAILWAY COMPANY and Mrs. O. L. SATTERFIELD.

In compliance with rule 27 of the supreme court of North Carolina, the appellants (the defendants) file the following exceptions to the decision and judgment of the court in the above-stated controversy submitted without action, to wit:

1. Appellants except to the decision of the court numbered "first."
2. Appellants except to the decision of the court numbered "second."
3. Appellants except to the decision of the court numbered "third."
4. Appellants except to the decision of the court numbered "fourth."
5. Appellants except to the decision of the court numbered "fifth."
6. Appellants except to the decision of the court numbered "sixth."
7. Appellants except to the decision of the court numbered "seventh."
8. Appellants except to the decision of the court numbered "eighth."
9. Appellants except to the decision of the court numbered "ninth."
10. Appellants except to the decision of the court numbered "tenth."

23 11. Appellants except to the decision of the court numbered "eleventh."

Appellants except to the decision and judgment of the court as set out in the record.

Dated at Durham, N. C., January 25, 1902.

GUTHRIE & GUTHRIE.
Attorneys for Defendants, Appellants.

Filed in the office of the clerk of the superior court of Person county, North Carolina, this the 27th day of January, 1902.

D. W. BRADSHAW,
Clerk Superior Court, Person County.

Undertaking for Costs on Appeal.

NORTH CAROLINA, *Person County.*

Superior Court.

JNO. R. SIMS, Sheriff of Person County,
against
NORFOLK AND WESTERN RAILWAY COMPANY and Mrs. O. L. Satterfield.

Whereas, the above-named defendants have appealed to the supreme court of North Carolina from the decision and judgment rendered against them, and in favor of the plaintiff, in the above-entitled controversy submitted without action in the superior court of Person county:

Now, therefore, we, the undersigned, undertake in the sum of twenty-five dollars that the appellants will pay all costs
24 & 25 which may be awarded against them, or either of them, on said appeal, not to exceed the sum of twenty-five dollars.

This the 25th day of January, 1902.

NORFOLK & WESTERN RAILWAY CO. AND MRS. O. L. SATTERFIELD,
By GUTHRIE & GUTHRIE, *Attorneys.*
WM. A. GUTHRIE.

NORTH CAROLINA, *Durham County.*

Wm. A. Guthrie, the surety to the foregoing undertaking, being duly sworn, says that he is a freeholder in the county of Durham, in said State, and worth double the amount of the foregoing undertaking for costs over and above his just debts and liabilities and exemptions allowed by law.

WM. A. GUTHRIE.

Sworn and subscribed before me this the 25th day of January, 1902. Witness my hand and official notarial seal.

[SEAL.] W. J. HOLLOWAY,
Notary Public.

Filed in my office this January 27, 1902.
D. W. BRADSHER,
Clerk Superior Court, Person County.

Certificate.

Be it remembered, that the foregoing constitutes a true copy of the case agreed, the submission, the judgment, appellant's exceptions, and the formal orders, and the case on appeal, as appears of record in my office in the foregoing controversy without action, en-
26 titled, "Jno. R. Sims, sheriff of Person county, *vs.* Norfolk and Western Railway Company, and Mrs. O. L. Satterfield," which was submitted under sections 567, etc., of the Code of North Carolina, at chambers, to Honorable Walter H. Neal, judge holding the courts of the ninth judicial district, and which has been duly docketed in my office as required by law under direction of the court.

Witness my hand and official seal at Roxboro, in said county of Person, this the 27th day of January, 1902.
[SEAL.]
D. W. BRADSHER,
Clerk Superior Court, Person County.

27 (*Docket Entries.*)

Appeal of defendant docketed February 3, 1902—Argued April 3, 1902 by Guthrie & Guthrie for defendant appellant, Shepherd & Shepherd and the attorney general for plaintiff appellee). Opinion of the court delivered May 27, 1902 as follows:—

CLARK, *J.*:

Laws 1901 chapter 9, section 52 provides that, "Every manufacturer of sewing machines, and every person or persons, or corporation, engaged in the business of selling the same in this State, shall, before selling or offering for sale any such machine, pay to the State treasurer a tax of three hundred and fifty dollars and obtain a license," and makes the failure to do so a misdemeanor.

By the "facts agreed" in this case it appears that Sears, Roebuck & Co. of Chicago have not paid said tax nor obtained a license, and that prior to this transaction they had made several deliveries at various points in North Carolina on the lines of other interstate railroads running into this State, and that all these shipments, like the one here in question, were made on bills of lading providing that the sewing machine should not be delivered till it was paid for by the person named as consignee. Thus the title could not pass till payment was made to the common carrier, acting as agent of the shipper. This was an executory contract in Illinois, but there was no sale till the payment was made, and thus the sale was executed in North Carolina and the shippers are liable to the above tax. The title to this machine having remained in the shipper until such payment (Tiedeman on Sales sects. 95, 97) the machine was properly levied on before such payment for the license tax due by the shippers. Laws 1901 ch. 9 sec. 101 (last paragraph of section). The

well-known case of O'Neal *v.* Vermont, 104 U. S. 324, is decisive of the point. There, in the shipment of liquor from New York
28 into Vermont, C. O. D. it was held that the completed executory contract was in New York, and the completed sale was in Vermont—as here.

Ober *v.* Smith, 78 N. C. 313; State *v.* Groves, 121 N. C. 632, relied on by defendants were cases of an unconditional delivery to the common carrier, and of course the title passed to the consignee upon delivery to the carrier. State *v.* Wernwag, 116 N. C. 1061 is much like the present case. No error.

(Title of Cause.)

Judgment.

This cause came on to be argued upon the transcript of the record from the superior court of Person county; upon consideration whereof this court is of opinion that there is no error in the record and proceedings of the said superior court. It is therefore considered and adjudged by the court here that the opinion of the court as delivered by the Honorable Walter Clark, justice, be certified to the said superior court to the intent that the judgment be affirmed; and it is considered and adjudged further that the defendants and surety do pay the costs of the appeal in this court incurred, to wit the sum of twelve $\frac{70}{100}$ dollars, and let execution issue therefor.

29 (Title of Cause.)

Agreement and Stipulation.

Whereas, the defendants above named, The Norfolk & Western Railway Company and Mrs. O. L. Satterfield, have procured a writ of error to the supreme court of North Carolina in order to have the decision and judgment of said court reviewed by the Supreme Court of the United States, and have complied with the requirements of law in that behalf: It is hereby mutually stipulated and agreed between the above-named parties to this controversy without action, that no attempt shall be made to enforce the judgment in this cause until after the final determination and judgment herein of the Supreme Court of the United States shall have been rendered, and in the meantime pending the hearing before the Supreme Court of the United States, the sewing machine referred to in this cause shall be and remain undisposed of, and subject to the levy already made thereon by the plaintiff, John R. Sims, by virtue of his office as sheriff of Person county, N. C., to await the decision of the Supreme Court of the United States.

Dated at Raleigh, North Carolina this 30th day of May 1902.

JAS. E. SHEPHERD,
Attorney for John R. Sims, Sheriff of Person County, North Carolina.

WM. A. GUTHRIE,
Attorney for Norfolk & Western Railway Co. and Mrs. O. L. Satterfield.

30 *Certificate.*

I, Thomas S. Kenan, clerk of the supreme court of North Carolina, do hereby certify the foregoing to be a full, true and correct copy of the record in the case of John R. Sims, sheriff of Person county against The Norfolk & Western Railway Company and Mrs. O. L. Satterfield, as appears from the same on file in this court.

Given under my hand and seal of said court at office in Raleigh on this the seventh day of June 1902.

[Seal of the Supreme Court of the State of North Carolina.]

THOS. S. KENAN,
Clerk Supreme Court of North Carolina.

Endorsed on cover: File No. 18,587. North Carolina supreme court. Term No. 359. The Norfolk and Western Railway Company and Mrs. O. L. Satterfield, plaintiffs in error, *vs.* John R. Sims, sheriff of Person county. Filed June 14th, 1902.